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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,108	02/15/2002	Olaf Zaencker		8552
29177	7590	05/29/2008		
BELL, BOYD & LLOYD, LLP			EXAMINER	
P.O. BOX 1135			DUONG, DUC T	
CHICAGO, IL 60690			ART UNIT	PAPER NUMBER
			2619	
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			05/29/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/076,108	ZAENCKER, OLAF	
	<b>Examiner</b>	<b>Art Unit</b>	
	Duc T. Duong	2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 March 2008.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2 and 5-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 5-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 31, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 2, and 5-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding to claims 1 and 14-16, there does not appear to be a written description of the claimed limitation "**counting a third number of detected RTP speech packets sent in a direction of the second VoIP endpoint and a fourth number of detected RTP speech packets sent in a direction of the first VoIP endpoint and arithmetically processing the counted third and fourth numbers**" in

the specification as filed. It seems like applicant have incorrectly amended the claims by adding new matter for the purpose of avoiding prior art.

Applicant should take note that the rejection of claims 1, 2, 5, and 8-23 over Sand in view of Diets would still stand as follows should applicant remove the new matter.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 5, and 8-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand (US Patent 6,521,746 B1) in view of (Dietz et al (US Patent 6,651,099 B1).

Regarding to claims 1, 16, 17, 22, and 23, Sand discloses a system comprising a detecting unit 32, arranged at a detection point on a transmission channel between a first 38 (left-end) and a second 38 (right-end) VoIP endpoints to detect a first number of RTP speech packets transmitted in a direction of the second VoIP endpoint (fig. 3 col. 5 lines 55-62), and to detect a second number of the RTP speech packets transmitted in a direction of the first VOIP endpoint (fig. 3 col. 6 lines 21-22); and an arithmetic processing unit 54 INMD connected on the input side to the detecting unit to calculate a

value representing the transmission quality (i.e. speech level, noise, echo, path delay) from the first and second numbers (fig. 4 col. 6 lines 23-28).

Sand fails to teach for the arithmetic processing include a subtraction, where a value 0 for the difference represents the highest quality transmission quality.

However, Dietz discloses a system and method for monitoring traffic in a network, where a set of statistical operations is perform by a calculator on the size and difference (subtraction) of packets transmitted in each direction to determine results that represent a transmission quality (col. 20 lines 41-55). Though Dietz fails to teach for a result where the value 0 for the difference represents the highest quality transmission quality. It would have been obvious to a person of ordinary skill in the art, at the time of the invention, to employ such value for a result since such value for depend more upon the choice of the inventor than any inventive concept.

Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to employ such arithmetic operations as taught by Dietz into Sand's system to perform analysis and measures on the network usage and performance.

Regarding to claims 2 and 13, Sand discloses a predetermined time period of detection for a 10 Mbit/s transmission channel longer than 5s or 10s (fig. 7 col. 7 line 66-67 and col. 8 lines 1-6).

Regarding to claims 5 and 18, Sand discloses the value representing the transmission quality is subjected to a threshold value discrimination in order to suppress side effects due to features of the communication protocol (col. 6 lines 29-31 ).

Regarding to claims 8 and 19, Sand discloses the detected first and second numbers and/or the calculated values for a plurality of first and second VoIP endpoints connected to the IP network between which bidirectional speech connections exist in each case are logged (col. 5 lines 63-65).

Regarding to claims 9 and 20, Sand discloses the detected first and second numbers for the first and second VoIP endpoints connected to the IP network within which bidirectional speech connections exist in each case are subjected to summarizing statistical processing to obtain an overall value representing the overall transmission quality of the IP network or of a section of the overall transmission quality of the IP Network (fig. 5 col. 6 lines 56-67).

Regarding to claims 10 and 21, Sand discloses the value representing the transmission quality is signaled to subscribers at the first and/or second VoIP endpoints and/or to an operation control center of the IP network (col. 6 lines 32-33).

Regarding to claims 11 and 12, Sand discloses the value representing the transmission quality is determined in real-time (col. 5 lines 55-62) and is used as an input variable for controlling the speech transmission over the IP network (col. 6 lines 34-40).

Regarding to claims 14 and 15, Sand discloses a method comprising detecting 32 at a detection point on a transmission channel between a first 38 (left-end) and a second 38 (right-end) VoIP endpoints a first number of RTP speech packets transmitted in a direction of the second VoIP endpoint (fig. 3 col. 5 lines 55-62), and a second number of the RTP speech packets transmitted in a direction of the first VOIP endpoint (fig. 3 col. 6 lines 21-22); and arithmetically process 54 INMD a value representing the transmission quality (i.e. speech level, noise, echo, path delay) from the first and second numbers (fig. 4 col. 6 lines 23-28); and routing the connection between the first and second VoIP endpoints based on the valve 26 (fig. 3 col. 5 lines 1-10).

Sand fails to teach for the arithmetic processing include a subtraction, where a value 0 for the difference represents the highest quality transmission quality.

However, Dietz discloses a system and method for monitoring traffic in a network, where a set of statistical operations is perform by a calculator on the size and difference of packets transmitted in each direction to determine results that represent a transmission quality (col. 20 lines 41-55). Though Dietz fails to teach for a result where the value 0 for the difference represents the highest quality transmission quality. It would have been obvious to a person of ordinary skill in the art, at the time of the invention, to employ such value for a result since such value for depend more upon the choice of the inventor than any inventive concept.

Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to employ such arithmetic operations as taught by Dietz into

Sand's system to perform analysis and measures on the network usage and performance.

***Response to Arguments***

6. Applicant's arguments filed March 31, 2008 have been fully considered but they are not persuasive.

Regarding to applicant's argument on page 7 of the Remarks that the specification (pages 7-8) provided teaching for the claimed limitation "**counting a third number of detected RTP speech packets sent in a direction of the second VoIP endpoint and a fourth number of detected RTP speech packets sent in a direction of the first VoIP endpoint and arithmetically processing the counted third and fourth numbers**". In response, the examiner traversed such assertion. First, although in the specification page 7 lines 23-34 teach of speech packets are transmitted bidirectional between two VOIP endpoints. However, the examiner disagreed with applicant that such teaching would implied of transmitting a **first number** of RTP speech packets and transmitting a **second number** of speech packets, since such teaching could also implied of transmitting "**a number**" of speech packets bidirectional. Thus, applicant's assertion of such teaching is invalid. Second, the examiner has thoroughly studied pages 7-8 of the specification, and still the examiner found no such teaching of newly added claimed limitation. Applicant's attempt to rationalize that such teaching of the claimed limitation is presented in the specification as cited is based on hindsight reasoning. But in reality the cited passage only teach that the quality of

speech packets can be determined via bidirectional equilibrium criterion. Therefore, based on the reasons set forth here the rejections are maintained.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is (571)272-3122. The examiner can normally be reached on M-F (8:00 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. T. D./  
Examiner, Art Unit 2619

/Wing F. Chan/  
Supervisory Patent Examiner, Art Unit 2619  
5/27/08

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